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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 130

HARRY B. MITCHELL, FRANCES PERKINS, ARTHUR S. FLEMMING, INDIVIDUALLY AND AS MEMBERS OF THE CIVIL SERVICE COMMISSION, PETITIONERS

v.

JACK W. COHEN

No. 131

HARRY B. MITCHELL, FRANCES PERKINS, ARTHUR S. FLEMMING, INDIVIDUALLY AND AS MEMBERS OF THE CIVIL SERVICE COMMISSION, PETITIONERS

v.

HARRY W. HUBICKEY

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The oral opinion of the District Court of the United States for the District of Columbia (R. 44–45, 59–60) is reported at 69 F. Supp. 54. The

majority and dissenting opinions in the United States Court of Appeals for the District of Columbia (R. 62–71) are reported at 160 F. 2d 915.

JURISDICTION

The judgment of the Court of Appeals covering both cases was entered on March 24, 1947 (R. 71–72). The petition for writs of certiorari was filed on June 13, 1947, and was granted on October 13, 1947. The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether members of the Volunteer Port Security Force, a branch of the Temporary Coast Guard Reserve, who were assigned duty periods (here, of less than six hours a week) in order to interfere as little as possible with their hours of regular civilian employment during their enrollment, who could be disenrolled at their own request upon representation that their duty assignments conflicted with such civilian employment, who were not subject while on duty to transfer away from their homes without their consent, and who remained at all times subject to the draft provisions of the Selective Training and Service Act, 1940, are entitled to preference in federal employment as "ex-servicemen * * * who have served on active duty in any branch of the armed forces of the United States, during

any war," within the meaning of the Veterans' Preference Act of 1944.

STATUTES INVOLVED

The Veterans' Preference Act of 1944, 58 Stat. 387, and pertinent portions of the Coast Guard Auxiliary and Reserve Act, 55 Stat. 12, as amended, are set forth in the Appendix, pp. 58–71.

STATEMENT

The essential facts in these cases, which are substantially identical and are not in dispute, are as follows:

Respondent Cohen was enrolled as a temporary member of the United States Coast Guard Reserve on April 13, 1944, to serve as a member of the Volunteer Port Security Force and was assigned to duty with the Captain of the Port, Washington, D. C. (R. 1–2, 9, 10, 15). He served only on part-time duty without compensation and without interruption of his civilian employment with the Government (R. 2). He was disenrolled as a temporary member of the Reserve on September 5, 1945, having served on active duty fifty-eight days, for a total service of 398 hours (R. 2, 9, 15). Respondent Hubickey was enrolled as a temporary member of the United States Coast Guard Reserve on October 18, 1944, to serve as a member of the Volunteer Port Security Force, and was assigned to duty with the Captain of the Port, Philadelphia, Pennsylvania.

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He served only on part-time duty without compensation, and without interruption of his civilian employment with the Government (R. 46–47, 54, 56). He was disenrolled as a temporary member of the Reserve on September 30, 1945, having served on active duty thirty-two days, for a total service of 250 hours (R. 54).

Pursuant to the authority set forth in Section 207 of the Coast Guard Reserve Act, Act of February 19, 1941, c. 8, 55 Stat. 12, as amended,[1] the Commandant, United States Coast Guard, undertook to enroll as temporary members of the

[1] Section 207 provides:

"The Commandant, with the approval of the Secretary of the Treasury or of the Secretary of the Navy, while the Coast Guard is operating as a part of the Navy, is hereby authorized to enroll as temporary members of the Reserve, for duty under such conditions as he may prescribe, including but not limited to part-time and intermittent active duty with or without pay, and without regard to age, members of the Auxiliary, such officers and members of the crew of any motorboat or yacht placed at the disposal of the Coast Guard, and such persons (including Government employees without pay other than compensation of their civilian positions) who by reason of their special training and experience are deemed by the Commandant to be qualified for such duty, as are citizens of the United States or of its Territories or possessions, including the Philippine Islands, to define their powers and duties, and to confer upon them, appropriate to their qualifications and experience, the same ranks, grades, and ratings as are provided for the personnel of the regular Coast Guard Reserve. When performing active duty with pay, as herein authorized, temporary members of the Reserve shall be entitled to receive the pay and allowances of their respective ranks, grades, or ratings, as may be authorized for members of the regular Coast Guard Reserve."

Coast Guard Reserve approximately 70,000 persons for such duty as was prescribed in the various contracts of enrollment (R. 13). The duties of these members ranged from full-time active duty, with military pay and allowances, to part-time or intermittent duty without pay and allowances other than for uniforms (R. 13–15).[2] Under the

[2] Members of the Coast Guard Reserve (Temporary) were enrolled according to the following classifications (R. 13–15, 22):

(1) For full-time duty with military pay and allowances. Little, if any, distinction was made between this group and regular members of the Reserve of similar rank or ratings, with the exception that the former was generally limited to the performance of duty at shore stations within the continental limits of the United States and aboard vessels operating from continental shore bases. We do not contest the right of members of this branch of the Reserve to the benefits of the Veterans' Preference Act.

(2) For part-time or intermittent duty without pay and allowances other than for uniforms. The service of these personnel was purely voluntary and their only compensation was a uniform allowance if they consistently served 12 hours per week. This was known as the Volunteer Port Security Force, of which respondents were members. There were some 70,000 men enrolled in the temporary reserve at one time. Of this number, the largest single group comprised the Volunteer Port Security Force, although there is no record of its exact number.

(3) For pilots without pay and allowances other than for uniforms but paid by their own companies. Pilots throughout the country were enrolled and put in uniforms in officer rank as a matter of military convenience. This made it possible to exercise a certain amount of military control over these men in time of war, and to clothe them in some military authority.

(4) For officers of Great Lakes vessels without pay and allowance other than for uniforms but paid by their own

terms of enrollment to which respondents and other members of the Voluntary Port Security Force subscribed, they continued their regular civilian employment and could not be transferred from the place they lived without their consent (R. 6, 15, 51). It was the practice of the Coast Guard to assign duty periods for the convenience of the members of the Volunteer Port Security Force so as to interfere as little as possible with the hours of their regular civilian employment, and many members of the Volunteer Port Security Force were disenrolled at their own request upon representations that their duty assignments conflicted with their civilian employment (R. 15). These members were obligated to be on active duty "only as directed by competent authority for a minimum of 12 hours per week" (R. 6, 51). They received no pay for such duty; however, they did, in most cases, receive a uniform allow-

companies. These personnel were enrolled as temporary officers in the Coast Guard Reserve in an effort to prevent sabotage on Great Lakes vessels.

(5) For Coast Guard police without pay and allowance. These personnel were enrolled to afford protection to war plants. The program was abandoned by the Navy in February 1944, upon the advice of Congress.

(6) For Civil Service employees of the Coast Guard enrolled for full-time active duty without pay other than compensation of their civilian positions. Civilian key employees of the Coast Guard were enrolled as temporary members of the reserve as a matter of administrative convenience. They continued to perform the same duties, retain their civil service status, and receive civil service pay.

ance, and, in some instances food or subsistence allowance while on active duty (R. 7, 14, 15, 52). Enrollees in the Volunteer Port Security Force ordinarily served on patrol of waterfronts, as sentries, and in the guarding and protection of harbors, ports, and shipping (R. 14).

Members of the Volunteer Port Security Force were not exempted from the Selective Training and Service Act of 1940, as amended, and many were in fact drafted or did enlist in the regular or regular reserve components of the armed forces, thereby necessitating their disenrollment as temporary members of the Coast Guard Reserve (R. 7, 15, 52). They were accorded the same hospital treatment as members of the Regular Coast Guard Reserve for illness or disease contracted while on duty. However, in case of physical injury or death incurred in line of duty, they were entitled only to the benefits granted to federal civilian employees by the United States Employees Compensation Commission (R. 7, 40, 52). Members of this group were not accorded the benefits of National Service Life Insurance (R. 32, 33, 40, 42). The certificates of enrollment for members of the Volunteer Port Security Force provided that their military status should attach only during periods when they were actually engaged on active duty or en route to and from such duty (R. 6–7, 51–52). While on active duty they wore the uniform and were vested with

the same authority as members of the regular Coast Guard of similar rank, grade, or rating, and were subject to the laws, regulations, and orders of the Coast Guard and to its disciplinary action (R. 6–7, 51–52). Upon severance they did not receive an honorable discharge, but were issued a "Certificate of Disenrollment" (R. 9, 54); they did not receive mustering-out pay (R. 21–24).

On April 4, 1944, before the passage of the Veterans' Preference Act, the Civil Service Commission issued Circular Letter No. 4145 to Regional Directors and Division Chiefs of the Commission, which provided that active duty performed by temporary members of the Coast Guard Reserve, whether full time, part time, or intermittently, either with or without pay, including Government employees enrolled without pay other than the compensation of their civilian positions, constituted active duty as distinguished from training duty and entitled the member performing such duty to preference benefits under the then existing preference laws (R. 3–4, 18–19, 48–49). However, a week later, on April 11, 1944, the Secretary of the Navy determined that only those temporary Coast Guard Reservists who were performing full-time active duty at full pay and allowances at shore stations or on Coast Guard vessels were entitled to the benefits of the Mustering-Out Payment Act of February 3, 1944, c. 9, 58 Stat. 8 (38 U. S. C., Supp. V, 691a) (R. 20–

24).[3] Subsequently, on November 4, 1944 (after the enactment of the Veterans' Preference Act), and pursuant to a recommendation of the Acting Secretary of the Navy, the Civil Service Commission modified its earlier ruling of April 4, 1944, and provided that only those temporary Coast Guard Reservists performing full-time duty with pay and allowances at shore stations or aboard Coast Guard vessels were entitled to veterans' preference under the terms of the Veterans' Preference Act of 1944, Appendix, *infra*, pp. 58–67. (R. 4–5, 16–20, 49–50).

In accordance with this ruling of November 4, 1944, respondents were denied veterans' preference by the Civil Service Commission (R. 2, 9, 10, 47, 54, 56). Thereafter, due to general reductions in force, respondent Cohen was discharged from his position as a civilian economist, War Department (R. 2, 10, 12), while respondent Hubickey was notified that he would be discharged from his position as a civilian naval architect, Navy Department (R. 47, 55–56). Respondents instituted these actions, praying that petitioners be ordered to classify them as preference eligibles, and that the court adjudge and declare them entitled to the

[3] The Judge Advocate General of the Navy pointed out that allowance of mustering-out pay to temporary Coast Guard reservists would run counter to one of the major purposes of the Mustering-Out Payment Act, namely, to help servicemen and women tide over the difficult period of readjustment from military to civilian life (R. 23).

status of preference eligibles under the provisions of the Veterans' Preference Act of 1944, Appendix, *infra*, pp. 58–67 (R. 1–5, 46–50). Both petitioners and respondents moved for summary judgment (R. 11, 13, 57, 58) and the District Court granted judgments for respondents (R. 43–44, 58–59). On appeal, the court below affirmed (R. 62–72), Mr. Justice Edgerton dissenting.

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that temporary members of the Volunteer Port Security Force of the Coast Guard Reserve are entitled to preference in federal employment.

2. In failing to give effect to the plain intent of Congress, as disclosed by the legislative history of the Act, as to the type of ex-serviceman intended to be entitled to the benefits of the Act.

3. In holding that respondents are veterans entitled to the benefits of the Veterans' Preference Act of 1944.

4. In holding that respondents are "ex-servicemen" within the meaning of that term as used in the Veterans' Preference Act.

5. In holding that the official action of petitioners as members of the Civil Service Commission could be compelled in the circumstances of this case.

6. In affirming the judgment for respondents.

SUMMARY OF ARGUMENT

I. Temporary Coast Guard reservists are not entitled to veterans' preference under Section 2 of the Veterans' Preference Act of 1944, which establishes preference for "those ex-servicemen and women who have served on active duty in any branch of the armed forces of the United States, during any war * * * and have been separated therefrom under honorable conditions." This statutory provision, like most other statutes in the field of military and veterans' legislation, can properly be read only in the light of its policy, purpose, context, and history. In the first place, the words of the Act, read literally and by themselves, give rise to serious questions: "active duty" might well mean active *full-time* duty; "ex-serviceman" and "veteran," its statutory synonym, have a widespread common connotation at variance with respondents' hybrid part-time status; and other provisions of the Act cannot well be applied to ex-(temporary) reservists. Thus, the true meaning of Section 2's terms cannot be ascertained from the words alone, but only by reference to the Act's background and purpose. But even if the statutory words be thought to be plain on their surface, the result which respondents urge—their attainment of veterans' status—is so far at variance with the policy of the legislation as a whole that the statute's "apparent absolutes" must give way

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to a more reasonable and just reading, as this Court has consistently held from *United States* v. *Kirby*, 7 Wall. 482, to *Markham* v. *Cabell*, 326 U. S. 404.

The purpose of the Veterans' Preference Act, the circumstances of its enactment, and its related legislation, all indicate that preference is not to be accorded to men who retained their civilian employment during the war, and served as intermittently, and on as restricted a basis, as respondents. It is clear from the legislative history that the major purpose of the Act, so far as World War II veterans were concerned, was to aid in the reemployment and rehabilitation of these veterans on their return to civilian life by giving them a definite priority in the Federal service. This purpose would be hindered, rather than furthered, by conferring preference on persons who continued their normal civilian employment during the war, who remained part of the civilian community, who served intermittently and for short weekly periods, whose Coast Guard assignments were selected so as to interfere as little as possible with their regular civilian employment, who could not be transferred without their consent, and who could be disenrolled at their own request if their duty assignments conflicted with their civilian work. Granting preference to these individuals would gravely dilute the rights of real veterans, and of the thousands of civilian government workers whose

job status during the war was the same as that of respondents.

This Congressional purpose to protect full-time veterans is reflected in the terms of the Act which speak of "ex-servicemen" and "veterans," and contain general provisions obviously applicable only to those who served full-time. Proceedings in the 80th Congress on legislation to amend the Act, arising out of this litigation, indicate a widespread view both that temporary Coast Guard reservists should not receive preference and also that the lower courts have misconstrued the purpose and intent of the 78th Congress, which adopted the Preference Act. This bill, excluding the reservists by defining "active duty" as "full-time duty," has passed the House of Representatives, and been favorably reported to the Senate by its Committee on Civil Service.

Significant light on the meaning and intent of the Preference Act is also cast by the Servicemen's Readjustment Act of 1944 (the "G. I. Bill of Rights"), a contemporaneous enactment, and by other related federal military and veterans' legislation. The Readjustment Act accords its benefits to "any person who shall have served in the active military or naval service," and been honorably separated "after active service of ninety days or more." If the similar words of the Preference Act entitle respondents to veterans' preference, temporary reservists who put in ninety days of service—of whom there seem

to be a substantial number—would be eligible for the benefits of the G. I. Bill of Rights. But it is hardly conceivable that Congress intended these rights, designed to help returning veterans reintegrate themselves in civilian life, to be available to temporary reservists who had never been removed from civilian life; and the Veterans' Administration has so ruled. The Preference Act, so similar in purpose and wording, and enacted at the same time, is plainly *in pari materia,* in the strictest sense, and should be read in the same way. Coast Guard temporary reservists have also been administratively held ineligible for related privileges, such as National Service Life Insurance, veterans' pensions, medical and hospital benefits, and mustering-out pay. The purpose, language, and administrative construction of this "general system" of statutes are persuasive against respondents' claim for rights under the Preference Act, which forms one part of that system.

That soldiers who served at headquarters in Washington and unmarried widows of veterans likewise fall under the Act's protection hardly proves, as the Court of Appeals thought, that respondents must prevail. The former differed radically from temporary reservists in being subject at all times to military discipline, and to immediate transfer, frequently into actual combat, without their consent. Preference for veterans' widows was merely a continuation of the

requirements of previous legislation, and constitutes a derivative right stemming from the services performed by the deceased veteran-husband when he was removed from civilian life.

II. Nor did respondents acquire veterans' preference under Section 18 of the Act (approved June 27, 1944)—preserving for "any preference eligible any rights heretofore granted to, or possessed by, him under any existing law, Executive order, civil-service rule or regulation"—by virtue of the Civil Service Commission's ruling of April 4, 1944, that temporary reservists were entitled to preference under the then existing law. This ruling was revoked on November 4, 1944. Respondents joined the reserve on April 13, 1944, and October 18, 1944, and were not disenrolled until September 5, 1945, and September 30, 1945, respectively. On June 27, 1944, when the Preference Act became law, neither was an "ex-serviceman," a "veteran" or a "preference eligible," in any sense of those words, and therefore not possibly in possession of any rights under the pre-existing law. The most that can be said of the April 4 ruling is that it informed respondents that if they thereafter served in the temporary Reserve, and the ruling continued unrevoked by the Commission and unchanged by Congress, they would receive preference upon their disenrollment. But they had no "vested" rights on June 27, the date of the Preference Act, and Section 18 was designed only to save

such "vested" rights, particularly of peacetime veterans who were entitled to preference under prior law but not under the new Act. Section 18 was not intended to preserve prior laws, rulings, and orders *in toto*, but only to the extent that rights under them had already been actually earned. Moreover, there is grave doubt whether the April 4 ruling was correct under the prior law, which gave preference only to "honorably discharged soldiers, sailors, and marines." Respondents obviously could gain no rights under such an unauthorized ruling.

ARGUMENT

I

TEMPORARY COAST GUARD RESERVISTS ARE NOT ENTITLED TO VETERANS' PREFERENCE UNDER SECTION 2 OF THE VETERANS' PREFERENCE ACT OF 1944

The Veterans' Preference Act of June 27, 1944 establishes preference in all government positions for "those ex-servicemen and women who have served on active duty in any branch of the armed forces of the United States, during any war, or in any campaign or expedition (for which a campaign badge has been authorized), and have been separated therefrom under honorable conditions." Section 2, *infra*, pp. 58–59.[4] In seeking this vet-

[4] The Act also grants preference to (a) veterans with service-connected disabilities or receiving pensions or retirement benefits; (b) wives of such service-connected disabled ex-servicemen as have themselves been unable to qualify for appointment; and (c) unmarried widows of deceased veterans. *Infra*, pp. 27–28, 45–46.

erans' preference for Coast Guard Temporary Reservists, respondents stand solely upon the statutory words, the "plain meaning" of which, without more, they assert as sufficient basis for their claim. We doubt, however, whether this Act, any more than the host of other legislation which reaches this Court for application, can properly be read without regard to the light cast upon it by the Congressional purpose in enacting it, or by its context and place in legislative history. Nor can we agree that the decisive language of the Act is so clear and plain to all who read that no room is left for choice informed by "the context, the purposes of the law, and the circumstances under which the words were employed." *Puerto Rico* v. *Shell Co.*, 302 U. S. 253, 258. Any proper reading of the Act, in our view, must deny the status of preferred veterans in the Federal service to men who served so intermittently in the armed services as these temporary reservists, whose military activities were so limited and circumscribed, who always remained an integral part of their civilian communities, and who could not, unlike others in the military service, be summarily removed from their homes without their consent.

A. SECTION 2 OF THE ACT CAN PROPERLY BE READ ONLY IN THE LIGHT OF ITS POLICY, PURPOSE, AND HISTORY

1. The field of military and veterans' legislation is preeminently one in which a searcher for meaning cannot stop after simply parsing the

printed page. The example of numerous decisions warns of the unlikelihood that a "plain" or "inescapable" reading will be found to settle a serious controversy. This Court, for instance, has held the word "officer" to exclude a paymaster's clerk in the Navy in one context (*United States* v. *Mouat,* 124 U. S. 303), but, in the decision immediately following, decided on the same day, a naval paymaster's clerk was held to be an "officer" for the purposes of another statute (*United States* v. *Hendee,* 124 U. S. 309). A "soldier" has been held also to be a "sailor" (19 Op. Atty. Gen. 586), and to include a member of the Women's Army Corps (*United States* v. *Williams,* 59 F. Supp. 300, 301 (W. D. N. Y.)), but not to comprehend an army field clerk serving in France (*Stephens* v. *Civil Service Comm.,* 101 N. J. L. 192). One discharged from the draft in 1918 before being accepted by the Army has been held an "honorably discharged *soldier*" by the Court of Appeals for the District of Columbia (*Hurley* v. *Crowley,* 50 F. 2d 1010), but refused that designation by the Supreme Court of Iowa (*Lamb* v. *Kroeger,* 233 Iowa 730; cf. *Patterson* v. *Lamb,* 329 U. S. 539); and the Supreme Judicial Court of Massachusetts holds him not to be a "veteran." *Dunn* v. *Commissioner of Civil Service,* 281 Mass. 376; cf. 40 Op. Atty. Gen. No. 103, October 16, 1945. Service in the Marine Corps has been recognized as service in the "Army or

Navy" (*United States* v. *Dunn*, 120 U. S. 249), and the terms "military forces" or "military establishment" frequently include the Navy or Marine Corps. *United States* v. *Sweeny*, 157 U. S. 281, 284; 31 Op. Atty. Gen. 445, 452; *In the Matter of Stewart*, 30 N. Y. Super. (7 Rob.) 635; *Maclean* v. *Brodigan*, 41 Nev. 468; *In re the Right of Electors*, 41 R. I. 118. In all these instances, it was plainly futile for courts or parties to rest on bare words, or to exclude the usual aids to meaning, and the statutory language was properly treated as open to interpretation.

2. Section 2 of the Veterans' Preference Act, using similar terms, and in the same general area of legislation, likewise presents a problem for construction. Even respondents' analytical word-by-word reading reveals room for questioning and for choice. For one thing, the statute requires service "on active duty"; on the basis of their Certificates of Disenrollment which refer to the intermittent activities they carried on as the performance of "active duty" (R. 9, 54), respondents assume that they automatically satisfy this requirement. But Congress' understanding of the words "active duty" in the Preference Act may well have been limited to *full-time duty*, even though for other purposes, in other legislation (such as the Coast Guard Auxiliary and Reserve Act), "intermittent active duty" was contemplated; indeed, an explicit definition of

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"active duty" as "active full-time duty with military pay and allowances" is the method used by the bill now under consideration by the 80th Congress to clarify the exclusion of temporary reservists from veterans' preference.[5] Again, the term "ex-servicemen," which is certainly less a word of art than "officer" or "soldier," has no precise technical definition ready for mechanical application, without regard to the purpose or background of the statute in which it appears. The Act also makes the word "ex-serviceman" synonymous with "veteran,"[6] a term with a

[5] H. R. 1389, 80th Congress, adopted by the House of Representatives on June 19, 1947 (93 Cong. Rec. 7464–7, daily ed.), and favorably reported by the Senate Committee on Civil Service (S. Rep. No. 396), would amend Section 2 to provide that "when used in this section the term 'active duty in any branch of the armed forces of the United States' shall mean active full-time duty with military pay and allowances in any branch of the armed forces during any war or in any campaign or expedition (for which a campaign badge has been authorized)." See, *infra*, pp. 34–35.

The Veterans' Administration likewise views temporary reservists as not within "what is ordinarily referred to as the 'active military or naval service.'" Administrator's Decision, Veterans' Administration, No. 699, May 20, 1946 (R. 29).

[6] The Act is entitled one "To give honorably discharged *veterans*, their widows, and the wives of disabled *veterans*, who themselves are not qualified, preference in employment where Federal funds are disbursed." 58 Stat. 387. [Italics supplied.] Its statutory name is "Veterans' Preference Act of 1944" (58 Stat. 387). The term "veteran" is also used interchangeably with "ex-servicemen" within the Act; Section 4, providing that experience credit be granted to those qualifying for preference under Section 2, twice refers to them as

widespread common connotation at variance with respondents' status. And, as we shall later show (*infra*, pp. 32–34), the Act itself contains other substantive provisions which it would be difficult rationally to apply to respondents if they were to be treated as preference eligibles. Here, we need not prove that, on the basis of the words of the statute alone, temporary reservists are not entitled to preference; it suffices to point out that respondents gravely err in urging that the Act is so clear and precise on its face that the Court's reading is compelled by the few lines of Section 2 which are directly pertinent. This is not the case, for instance, of a veteran of the Canadian Army who claims preference under a statute limiting that right to those who "served in the army, navy or hospital service *of the United States*" in World War I (*State ex rel. King* v. *Emmons*, 47 Ohio App. 348, 353) [italics supplied], or of the new resident of New Jersey who, in 1939, seeks special preference under legislation expressly restricted to those who received combat military decorations "while a resident of this State." *Chapman* v. *Edwards*, 124 N. J. L. 192, 196. Those legislative words were so definite and precise that no room was left for considerations extraneous to the bare language; here,

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"veterans." 58 Stat. 388; Section 5, regarding waiver of physical requirements, refers to "any veteran" (58 Stat. 388), and Section 8 speaks of a "veteran eligible" and of a "non-veteran."

the words themselves, individually and as a unit, give rise to serious questions.

3. Even if the face of Section 2 were plainer than we believe it to be, nevertheless, in our view, the Court should look to the purpose of the Veterans' Preference Act, its place in the scheme of veterans' legislation, and the effect of awarding veterans' status to respondents. For, as we shall show in detail, the rulings below produce "an unreasonable result 'plainly at variance with the policy of the legislation as a whole,'" and in such a case the Court "may follow the purpose of the statute rather than the literal words." *United States* v. *Rosenblum Truck Lines,* 315 U. S. 50, 55; *United States* v. *American Trucking Ass'ns.,* 310 U. S. 534, 543. "The policy as well as the letter of the law is a guide to decision. Resort to the policy of a law may be had to ameliorate its seeming harshness *or to qualify its apparent absolutes* as *Holy Trinity Church* v. *United States,* 143 U. S. 457, illustrates." *Markham* v. *Cabell,* 326 U. S. 404, 409. [Italics supplied.] "All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the Legislature intended exceptions to its language, which would avoid results of this character. The reason of the law in such cases should prevail over its letter." *United States* v.

Kirby, 7 Wall. 482, 486–7.[7] And in the search for the purpose and reason of the law, it is now settled that nothing relevant is out of bounds, no matter how "'clear the words may appear on 'superficial examination.'" *United States* v. *American Trucking Ass'ns.,* 310 U. S. 534, 543–544; *United States* v. *Dickerson,* 310 U. S. 554, 562.

B. THE PURPOSE OF THE ACT, THE CIRCUMSTANCES OF ITS ENACTMENT, AND RELATED LEGISLATION, ALL INDICATE THAT VETERANS' PREFERENCE IS NOT TO BE ACCORDED TO THOSE WHO RETAINED CIVILIAN EMPLOYMENT DURING THE WAR, AND SERVED AS INTERMITTENTLY AS RESPONDENTS

1. *Purpose of the Veterans' Preference Act.*—a. The major purpose of the Veterans' Preference Act of 1944 was to assure to World War II veterans a preferential employment status with the Federal Government upon their return to civilian

[7] Mr. Justice Field goes on to say (7 Wall. at 487): "The common sense of man approves the judgment mentioned by Puffendorf, that the Bolognian law which enacted, "that whoever drew blood in the streets should be punished with the utmost severity,' did not extend to the surgeon who opened the vein of a person that fell down in the street in a fit. The same common sense accepts the ruling, cited by Plowden, that the Statute of 1 Edward II, which enacts that a prisoner who breaks prison shall be guilty of a felony, does not extend to a prisoner who breaks out when the prison is on fire—'for he is not to be hanged because he would not stay to be burnt.' And we think that a like common sense will sanction the ruling we make, that the act of Congress which punishes the obstruction or retarding of the passage of the mail, or of its carrier, does not apply to a case of temporary detention of the mail caused by the arrest of the carrier upon an indictment for murder."

life.[8] Its enactment had been recommended by President Roosevelt, who said (H. Rep. 1289, 78th Cong., 2d Sess., p. 5):

> I believe that the Federal Government, functioning in its capacity as an employer, should take the lead in assuring those who are in the armed services that when they return special consideration will be given to them in their efforts to obtain employment. It is absolutely impossible to take millions of our young men out of their normal pursuits for the purpose of fighting to preserve the Nation, and then expect them to resume their normal activities without any special consideration shown them.
>
> The problems of readjustment will be difficult for all of us. They will be particu-

[8] H. R. 4115 was introduced on February 3, 1944 (90 Cong. Rec. 1233), and was referred to the Committee on Civil Service. The bill was favorably reported to the House on March 27, 1944 (90 Cong. Rec. 3156; H. Rep. No. 1289, 78th Cong., 2d sess.), and passed the House on April 17, 1944, after a short discussion. 90 Cong. Rec. 3501–3507. A companion bill, S. 1762, was introduced into the Senate on March 9, 1944 (90 Cong. Rec. 2401), and hearings were held on both bills by the Senate Committee on Civil Service on May 19 and 23, 1944. Hearings before the Committee on Civil Service, U. S. Senate, on S. 1762 and H. R. 4115, 78th Cong., 2d sess. The bill was reported favorably to the Senate on May 25, 1944 (90 Cong. Rec. 4959; S. Rep. No. 907, 78th Cong., 2d sess.), and passed the Senate, as amended, without debate, on June 12, 1944. 90 Cong. Rec. 5785. The House concurred in the Senate amendments, without debate, on June 20, 1944. 90 Cong. Rec. 6283. The bill was approved on June 27, 1944. 90 Cong. Rec. 6712.

> larly difficult for those who have spent months and even years at the battle fronts all over the world. Surely a grateful nation will want to express its gratitude in deeds as well as in words.

The bill was endorsed by the three major veterans' organizations (The American Legion, Veterans of Foreign Wars, Disabled American Veterans). (H. Rep. No. 1289, p. 7; 90 Cong. Rec. 3502; Hearings before the Committee on Civil Service, U. S. Senate, on S. 1762, 78th Cong., 2d sess., p. 8.)

The reports of the House and Senate Civil Service Committees stressed the general reemployment and rehabilitation benefits provided by the bill for those whose normal employment and mode of life had been disrupted by their service in the armed forces. The House report states (H. Rep. 1289, p. 3):

> Private employers and corporations, as well as State, county, and municipal governments, have been urged through the selective-service law and otherwise to afford reemployment to veterans when they leave the armed forces. Your committee feels that the Federal Government should set the pace, and that this proposal is an essential part of the reemployment and rehabilitation program.

Similarly, the Senate Committee's report (S. Rep. 907, p. 1) says: "The committee believes that in view of the fact that members of the armed forces

rapidly are being returned to civilian life, the bill should be enacted without delay."

The bill's sponsor, Mr. Starnes, presented it to the House with the statement that (90 Cong. Rec. 3502):

> * * * The biggest problem in the post-war period is providing jobs for able-bodied American citizens who have served in the armed forces. Jobs by which they can support themselves and their families; jobs which will permit them to retain their self-respect and feel that the country for which they have offered their all has not failed them.
>
> When this war is over and our boys come home they should not be forced to tramp the streets looking for jobs, nor to live on charity. There should be a job ready and waiting in private enterprise or with the Government, Federal, State, and local, for every American fighting man when he comes home when victory has been won.

Congressman Rees, then ranking minority member, thought that "Our Government should lead the way in the protection" of the "first right" of veterans "to their former jobs just as far as can be done when the war is over" (90 Cong. Rec. 3504); "veterans ought to have the first chance for jobs when they return from the service" (90 Cong. Rec. 3504). The debates in the House contain repeated references to "reemployment," "rehabilitation," "when the soldier returns who has been willing to fight for his country

on the fighting front," "when this war is over and our boys come home," and "when they return from service" (90 Cong. Rec. 3502, 3504, 3506).*

These legislative materials—Presidential statement, committee reports, debates—all reflect a clear Congressional purpose, with respect to World War II veterans, to confer employment preference only on those who gave up their normal pursuits and surroundings, as well as their freedom of movement, to the demands of military service.[10] The emphasis was squarely upon the

*In the course of the debate in the House of Representatives, Congresswoman Bolton asked whether the Committee had defined the "real meaning and interpretation" of "veteran," because of a general doubt "as to when a man becomes a veteran." She referred only to the problem caused by the reentry of discharged soldiers into the Army, and the difficulty of determining when such persons, with double service, become veterans. Congressman Rees replied that the Committee had not given consideration to that particular problem. (90 Cong. Rec. 3505.)

[10] Another purpose of the Act was to bring together, for the first time, in comprehensive statutory form the substance of the various existing statutory provisions, Executive Orders, and regulations dealing with veterans' preference. S. Rep. 907, p. 1; H. Rep. 1289, p. 1; 90 Cong. Rec. 3502, 3505. In this connection, the Act continued the preference previously accorded to pre-World War II veterans, wives of disabled veterans, and widows of veterans. See, *infra*, pp. 44–46.

The pre-existing statutory provisions were:

(1) R. S. 1754, 5 U. S. C. 35 (from Section 1 of the Act of March 3, 1865, 13 Stat. 571):—preference in appointments for veterans discharged for service-connected disability.

(2) Section 3 of the Act of August 15, 1876, 19 Stat. 143, 169, 5 U. S. C. 37:—preference in reduction-in-force to "those

dislocation to the veterans' civilian reemployment caused by a period of full-time active duty with the armed forces; it was these "ex-servicemen" or "veterans," in the normal sense, whom Congress was anxious to aid. The short existing preference statutes, together with the detailed implementing Executive Orders, would afford considerable protection in appointments and reductions-in-force, but Congress was anxious to embody the entire preference scheme in legislation (S. Rep. 907, p. 1; H. Rep. 1289, p. 1; 90 Cong. Rec. 3502, 3503), and to insure substantial preference and special protection for returning veterans at every stage of personnel administration—certification for appointment, appointment, reinstatement, reemployment, promotion, retention,

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persons * * * who have been honorably discharged from the military or naval service of the United States, and the widows and orphans of deceased soldiers and sailors."

(3) Section 4 of the Act of August 23, 1912, 37 Stat. 360, 413:—preference in reduction-in-force to "honorably discharged soldier or sailor."

(4) Section 6 of the Act of March 3, 1919, 40 Stat. 1291, 1293, as amended by the Act of July 11, 1919, 41 Stat. 35, 37, 5 U. S. C. 35:—preference in appointments to "honorably discharged soldiers, sailors, and marines, and widows of such and to the wives of injured soldiers, sailors and marines who themselves are not qualified, but whose wives are qualified to hold such positions."

(5) Section 3 of the Act of June 18, 1929, 46 Stat. 21, 5 U. S. C. 35:—same as the 1919 provision.

(6) Section 3 of the Act of June 18, 1929, 46 Stat. 21, 13 U. S. C. 203:—preference in *census* appointments to war disabled servicemen, to their widows, and to the wives of such husbands not qualified for such positions.

transfer, reduction in force, furlough, discharge, suspension, reduction in work or salary, and recertification.

The purpose to help the returning veteran would hardly be furthered by conferring preference on persons who continued their normal civilian employment during the war, who retained their relative positions in the community and the financial advantages incident thereto, whose duty assignments with the Coast Guard were selected so as to interfere as little as possible with their hours of regular civilian employment (R. 15), who served only during relative short periods each week,[11] who could be disenrolled at their own request upon representation that their duty assignments conflicted with their civilian employment (R. 15), who could not be transferred away from their homes without their consent (R. 6, 15)—who, in short, were not uprooted from their homes, their wonted mode of life, or their normal employment. On the contrary, according preference to those of respondents' class would contravene the legislative purpose by seriously diluting the preference rights of the class Congress did intend to protect and help—the

[11] The contract of enrollment referred to "a minimum of 12 hours per week" (R. 6, 51). Respondent Cohen was enrolled for approximately 72 weeks, during which his service totaled 398 hours (R. 9, 15)—an average of less than six hours a week. Respondent Hubickey was enrolled for approximately 50 weeks, during which time his service totaled 250 hours (R. 54)—an average of five hours a week.

"real" veterans, who gave up their civilian employment, and their place in the civilian community.[12] As Mr. Justice Edgerton said in his dissent below (R. 70): "It is paradoxical to suggest that Congress intended to include, and aid in the rehabilitation and reemployment of, a whole class of men whose regular employment and way of life were never interrupted. To extend employment preference to men in appellees' situation will weaken the competitive position of the veterans whom Congress intended to help. It will also weaken the competitive position of the munition makers, and the many other employees both public and private, who did essential war work but have been given no preference." Such a result would be manifestly unfair, not only to the thousands of men and women now in government service who performed full-time active duty in the armed services, but also to the competitive position of other thousands of Federal workers who also voluntarily performed essential defense work during the war but who have been given no preference. The latter would see temporary reservists, whose civilian job status during wartime did not differ substantially from their own,

[12] The decision below accords preference rights to some 125,000 individuals (the total number of persons, we are advised by the Coast Guard, who were enrolled as temporary reservists in the Volunteer Port Security Force), and their widows. The number of such persons now in Government service, or listed on civil service registers, is not available.

now advance to a preferred category solely because of the particular type of extra-curricular war work in which the reservists engaged.

b. Furthermore, there is internal evidence in the Act that Congress meant preference beneficiaries to have served full-time in the forces. We have referred to the use of "veteran" as synonymous with "ex-serviceman." The common concept of "veteran" hardly fits respondents, with their weekly duty and uninterrupted civilian life.[13] As a New York judge said in an analogous case arising under a state statute granting preference to civil war veterans (*People* v. *Adams*, 18 N. Y. Supp. 896 (Gen. Term. 1892) at 897):

> There is great doubt whether the law giving a preference in public employment to veterans was even intended to cover the case of a member of a militia regiment, temporarily called out for a few days' service in the late Rebellion. * * *. Almost all * * * militia regiments, were at some period during the war called out for temporary service; but nobody ever supposed that thereby they all became veterans by such service.

"Ex-servicemen" is also a term that one cannot, in ordinary usage, apply to temporary reservists. "When one speaks of ex-servicemen one is not

[13] Disenrolled members of the Volunteer Port Security Force may not wear the honorable discharge button, which, to the general public at least, is the distinguishing mark of the veteran.

speaking of men who always remained subject to draft; who lived at home and could not, except through the machinery of the draft, be ordered to leave home; who constantly carried on their regular civilian occupations as usual; and whose connection with the armed forces involved only part-time unpaid work which entitled them only to civilian benefits in case they were injured." Mr. Justice Edgerton, dissenting below (R. 70). In ordinary usage, "ex-serviceman" and "veteran" connote one who enlisted, volunteered, was mustered, or was inducted, into the armed services of the United States; while serving in wartime was on full-time active military duty; was entitled to receive statutory military pay and allowances; from the time of his entry into the armed services until his separation was at all times subject to military order and discipline; and during his period of service did not form a part of the civilian community. It is in this sense that these terms are commonly understood by the public, as well as by the administrators of the various acts providing benefits for those who served in the armed forces. See, *infra*, pp. 40–44. Nothing points to the belief that Congress' understanding was otherwise; rather, the clear purpose of the Act to aid in the rehabilitation of the returning veteran buttresses the normal meaning.

Other portions of the Act give cumulative evidence. With obvious thought of full-time mili-

tary duty, Section 4 establishes experience credit for "time spent in the military or naval service of the United States" where the "veteran's * * * actual employment in a similar vocation to that for which he or she is examined was interrupted by such military or naval service." Similarly, Section 12 requires that in computing length of total service for reduction-in-force purposes, "the length of time spent in active service in the armed forces of the United States of each such employee shall be credited * * *." Application of these provisions to temporary reservists, who usually lost little or no time from their regular employment, would present complications, to say the least.

We may also briefly note one other curious consequence of reading the Preference Act to cover temporary reservists. On June 27, 1944, when the Act became law, many federal employees were enrolled as temporary reservists; some had already been disenrolled; and others were thereafter separated from time to time, until the final abolition of the Volunteer Port Security Force in 1945. Since preference exists only for "ex-servicemen," former reservists would automatically receive status upon their disenrollment, while those who continued as members of the reserve would take lower rank until they, too, achieved separation. Thus, if a reduction-in-force had occurred in 1944 or early 1945, disen-

rolled reservists would have been preferred over those still performing duty as members of the temporary reserve. In 1948, this perhaps appears an amusing antiquity, but it at least tends to show that the preference structure Congress erected in 1944 was hardly adapted to the temporary reservist's hybrid status—dominantly civilian and only very subordinately military.

c. Proceedings in Congress since the pendency of the present litigation indicate a widespread view in the 80th Congress, not only that temporary Coast Guard reservists should not receive veterans' preference, but also that the lower courts have misconstrued the purpose and intent of the 78th Congress, which adopted the Veterans' Preference Act. H. R. 1389 proposes to amend Section 2 by providing that "'active duty in any branch of the armed forces of the United States' shall mean active full-time duty with military pay and allowances in any branch of the armed forces during any campaign or expedition (for which a campaign badge has been authorized)." Hearings were held by the House Committee on Post Office and Civil Service, which heard support for the bill from the American Legion, Veterans of Foreign Wars, Disabled American Veterans, the American Veterans Committee, and opposition from the Coast Guard League. Hearings before the Committee on Post Office and Civil Service, House of Representatives, 80th Cong., 1st sess.,

on H. R. 1389. The House Committee unanimously reported the bill favorably (H. Rep. 465, 80th Cong., 1st sess.), characterizing it as a clarification of the original Congressional intent, and pointing out that temporary reservists did not sustain "any dislocation from their civilian employment, and, as such, they cannot be considered in the same category as those ex-servicemen who were actually uprooted from their civilian occupations and subject to the rigors of full-time military training and combat." On June 19, 1947, the House of Representatives adopted the bill by voice vote. 93 Cong. Rec. 7464–7467 (daily ed.). A unanimous Senate Committee on Civil Service reported the bill favorably on June 27, 1947 (S. Rep. 396), likewise treating it as a clarification of the meaning of the original Act; but the Senate adjourned without considering the measure, and the bill was not taken up at the recent special session. We think that the action taken thus far on H. R. 1389, and especially the terms in which this action has been cast, are persuasive of the purpose, policy, and meaning of the Veterans' Preference Act, as it was initially enacted on June 27, 1944.[14]

[14] In the 79th Congress, S. 1465 and H. R. 3814 provided for veterans' preference for members of the Volunteer Port Security Force who served six hundred hours; S. 1613 and H. R. 6170 sought expressly to deny preference to all temporary Coast Guard reservists. None of these bills was acted upon by the 79th Congress.

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2. *Relation of the Preference Act to the Servicemen's Readjustment Act of 1944.*—Perhaps as significant in the interpretation of Section 2 as legislative statements of purpose is the close connection of the Veterans' Preference Act with the Servicemen's Readjustment Act of 1944 (the "G. I. Bill of Rights"), 58 Stat. 284, Public Law No. 346, 78th Cong., 2d sess., establishing educational benefits, unemployment allowances, loan privileges, and other benefits for veterans. Both bills were proceeding through Congress at the same time; the Preference bill was introduced on February 3, 1944, and became law on June 27, 1944; the Readjustment bill was introduced on March 13, 1944, and became law on June 22, 1944. The Readjustment bill was, of course, a fundamental measure "to facilitate the return of service men and women to civilian life." S. Rep. 755, p. 2. The similar purpose, in a much narrower sphere, of the Preference bill, we have already set forth. *Supra*, pp. 24–27. The statutes are clearly *in pari materia*, in the classic sense of "'several acts forming a general system.'" *The Amelia*, 1 Cranch 1, 35.

The striking fact is that the qualifying designations of the Servicemen's Readjustment Act do not differ substantially—except with respect to duration of service—from that of the Preference Act: "Any person who shall have served in the active military or naval service of the United States at any time on or after September 16,

1940, and prior to the termination of the present war and who shall have been discharged or released therefrom under conditions other than dishonorable after active service of ninety days or more * * * shall be eligible for the benefits of this title * * *. [i. e., Title III, Loans for the Purchase or Construction of Homes, Farms, and Business Property], 58 Stat. 291; "Any person who shall have served in the active military or naval service of the United States at any time after September 16, 1940, and prior to the termination of the present war, and who shall have been discharged or released from active service under conditions other than dishonorable, after active service of ninety days or more * * * shall be entitled" to a readjustment allowance while unemployed. [Title V], 58 Stat. 295; "Any person who served in the active military or naval service on or after September 16, 1940, and prior to the termination of the present war, and who shall have been discharged or released therefrom under conditions other than dishonorable * * * who desires a refresher or retraining course, and who * * * shall have served ninety days or more * * *" shall be eligible for and entitled to receive education or training under Title II, 58 Stat. 288.[15]

[15] The 1945 amendments to the Readjustment Act (Act of December 28, 1945, 59 Stat. 623) entitle any person who served ninety days or more in the active military or naval service to full educational benefits, and not merely refresher.

The linguistic analysis which leads respondents and the courts below to insist that temporary reservists are "ex-servicemen * * * who have served on active duty in any branch of the armed forces of the United States, during any war * * * and have been separated therefrom under honorable conditions," and therefore entitled to veterans' preference, would likewise compel them to uphold the right of honorably disenrolled reservists to the benefits of the Readjustment Act, as persons who served in the "active military or naval service" since September 1940. The applicant would, of course, have to prove ninety days service, but apparently there is a substantial number of temporary reservists who can fulfill that requirement.[16]

That the Congress could have intended to bestow the various benefits of the "G. I. Bill of Rights" upon members of the Volunteer Port Security Force is hardly conceivable. These were benefits

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training or continuance of interrupted education. 59 Stat. 624.

[16] In the Court of Appeals, an *amicus curiae* brief was filed on behalf of a temporary reservist, stated to have served 218 days on active duty, who was interested, not in veterans' preference, but in securing a G. I. loan under the Readjustment Act.

A witness representing the Coast Guard League testified at the Hearing before the Committee on Post Office and Civil Service, H. of Reps., 80th Cong., 1st sess., on H. R. 1389 (*supra*, pp. 34–35) that the League has "voluntarily disavowed any claim to monetary benefits," but that in his opinion temporary reservists were legally entitled to benefits under the Readjustment Act (pp. 35–36).

for men and women whose civilian lives and careers had been disrupted by armed service, and who needed help so that they could be "speedily reintegrated into the civilian population." S. Rep. 755, p. 2. Temporary reservists had never been removed from the civilian community, and both Congress and the public would no doubt have been outraged had it been suggested in 1944 that such persons were entitled to the new rehabilitation privileges.

Veterans' preference is a lesser benefit, and more amorphous in form, but it is clearly a substantial right to all Government employees, as well as those seeking federal employment, especially at times when budgetary considerations necessitate reductions in force. It is, moreover, a benefit granted for the same purpose that moved Congress to adopt the Readjustment Act, and by the same Congress, at the same session; it is a single part of a general rehabilitation system adopted by the 78th Congress. Enacted contemporaneously with the Readjustment Act, it should be taken together with the major statute, and its qualifying terms, so similar in phrasing, should be read in the same way. Cf. *United States* v. *Freeman*, 3 How. 556, 564–5; *United States* v. *Stewart*, 311 U. S. 60, 64. If both acts had happened to form portions of a single statute, there would be little doubt that temporary reservists would have been excluded from all benefits, re-

adjustment and preference.[17] We do not believe that the accident of the legislative process which resulted in placing the Preference Act as chapter 287 of the 58th volume of the Statutes at Large, and the Readjustment Act as chapter 268, gives leave to disregard the latter in drawing meaning from the former.

3. *Other pertinent military and veterans' legislation:*[18]

a. *National Service Life Insurance.*—National Service Life Insurance, one of the most important benefits accorded by Congress to those in the military service, is statutorily available to "every person" "enrolled" in "active service in the land or naval forces (including the Coast Guard) of the United States," if such person is ordered to active duty for a period of more than thirty days. National Service Life Insurance Act of 1940, 54 Stat. 1008, Secs. 601 (c) and 602 (a), 38 U. S. C. 801 (c) and 802 (a). Temporary Coast Guard reservists, in respondents' view, would clearly be covered by these qualifying

[17] The Veterans' Administration has ruled that temporary reservists are not eligible for any of the benefits under the "G. I. Bill of Rights." Cf. R. 27–37, esp. 29.

[18] The legislative history of the provisions of the Coast Guard Auxiliary and Reserve Act of February 19, 1941, and its amendments, under which temporary reservists were enrolled (55 Stat. 9, 12, 56 Stat. 329, 56 Stat. 1020, 1021, 14 U. S. C., Supp. V, 301–315), contains nothing indicating the views of Congress as to their status as veterans or ex-servicemen. See S. Rep. 31; H. Rep. 25; S. Rep. 1317; H. Rep. 2072; H. Rep. 2525; S. Rep. 1657, all of the 77th Congress.

words—at least as broad as those of the Preference Act—and therefore eligible to secure this Government insurance. But the Veterans' Administration, which administers the National Service Life Insurance system, consistently ruled that temporary reservists were not entitled to apply for insurance, on the ground that the act covered only those in the full-time service. R. 29; 32, 33, 37, 40, 42. This consistent, contemporaneous construction of an important related statute bears persuasively on the meaning of the kindred terms in the instant Act. Cf. *United States* v. *American Trucking Ass'ns.*, 310 U. S. 534, 549; *Billings* v. *Truesdell*, 321 U. S. 542, 552–553; *United States* v. *Wyoming*, 331 U. S. 440, 454.

b. *Veterans' pension, medical, and hospital benefits.*—The Veterans' Administration has also ruled temporary reservists ineligible for the pension, medical and hospital benefits which it administers pursuant to Title I of the Act of March 20, 1933 (Public Law No. 2, 73d Congress), 48 Stat. 8, as amended, and related statutes (38 U. S. C., Chap. 12 and regulations). R. 27–37, esp. R. 29. Here, again, the qualifying terms are similar to, and certainly no narrower than, those of Section 2 of the Preference Act.[19]

[19] Veterans' Regulation No. 10 (following 38 U. S. C. 724 and 38 U. S. C., Supp. V, 735) provides:

"II. The term 'military or naval forces' shall mean the Army, the Navy, the Marine Corps, the Coast Guard, the

c. *Mustering-out pay.*—The Navy held members of the Volunteer Port Security Force "not eligible, on disenrollment, for mustering-out payments under the Mustering-Out Payment Act of 1944," 58 Stat. 8; R. 21–24, 31. The Judge Advocate General of the Navy pointed out that these temporary reservists had agreed to serve without pay and allowances; and that mustering-out pay was intended "to help service men and women tide over the difficult period of readjustment from military to civilian life." R. 23, 24.

d. *Other legislation.*—(1) The Navy Department and a federal District Court both ruled that temporary reservists were eligible for expeditious

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Naval Reserves, the National Naval Volunteers, and all other branches of the United States service while serving pursuant to law with the Army or Navy.

"III. The term 'person who served' shall mean a person, whether male or female and whether commissioned, enlisted, enrolled or drafted, who was finally accepted for active service in the military or naval forces of the United States, members of training camps authorized by law, and such other persons heretofore recognized by statute as having a pensionable status.

"IV. The term 'veteran of any war' shall include the following persons: * * * World War II—Any person who served in the active military or naval service of the United States on or after December 7, 1941, and before the termination of hostilities in the present war as determined by proclamation of the President or by concurrent resolution of the Congress: *Provided*, That the term 'active military or naval service,' as used herein, shall include active duty as a member of the Women's Army Auxiliary Corps; Women's Reserve of the Navy and Marine Corps, and the Women's Reserve of the Coast Guard."

naturalization under the amended Nationality Act of 1940, Title III, 56 Stat. 182, 50 U. S. C. App., Supp. V, 640, as persons who were serving "honorably in the military or naval forces of the United States during the present war." *Petition of Delgado,* 57 F. Supp. 460 (N. D. Cal.) (a Philippine citizen), R. 41. The terms of that statute, which does not refer to "active duty" or "servicemen," are more sweeping than those of the Preference Act; and the liberal Congressional purpose to facilitate naturalization of aliens helping to defend the country impels the broadest interpretation of the qualifying words, especially, as the District Court said, since the only non-citizens eligible for service in the Coast Guard were citizens of United States territories and possessions, including the Philippine Islands. Cf. *Petition of Agustin,* 62 F. Supp. 832, 835 (N. D. Cal.) (Filipino guerrilla naturalized); *In re Peter You Lo Chen,* D. Mass., decided November 18, 1947, 16 U. S. Law Week 2266 (December 9, 1947) (Chinese who made every effort to enter armed forces, but was never called, naturalized).

(2) The Navy Department also held that post cards for use in absentee war-time voting under the "Servicemen's Voting Law" (Act of April 1, 1944, Public No. 277, 78th Congress, 58 Stat. 136), should be distributed to temporary reservists. R. 31, 41. That statute applied, among others, to all

"members of the armed forces, inside the United States." Sec. 302 (a), 58 Stat. 141.[20]

(3) The Veterans' Administration ruled that even temporary Coast Guard reservists receiving pay and allowances were not in active service, and could therefore receive veterans' benefits or retired pay without violating the "statutes and regulations which would prohibit the payment of veterans' benefits or retired pay to persons in receipt of active service pay" (R. 33).

From this review of the qualifying terms, and the purpose of the Servicemen's Readjustment Act, the National Service Life Insurance Act, and the Mustering-Out Payment Act, it is plain that both the policy and the wording of those measures are closely related to those of the Preference Act. It also seems clear that temporary reservists are not entitled to those benefits; and the agencies who administer these statutes so hold. In our opinion, these are extremely pertinent, if not decisive considerations, in the interpretation of Section 2 of the Preference Act, and its application *vel non* to respondents.

4. *Views of the Court of Appeals.*—a. In an effort to refute the Government's contention that the Preference Act envisages full-time service

[20] The Government has never denied that temporary reservists were "members" of the Coast Guard, a branch of the armed forces of the United States, and subject to military law while on duty. Cf. *Brown* v. *Cain*, 56 F. Supp. 56 (E. D. Pa.); R. 7, 40, 41.

only, the court below argued that in the same paragraph of the Act (Section 2) Congress gave identical preference eligibility to the unmarried widows of deceased servicemen, and that, generally speaking, the "wives of servicemen continued normal civilian employment during the war" (R. 67–68). But the "unmarried widow's" right to preference is a derivative one, stemming from the services which her deceased husband performed. She is preferred, not because *she* was removed from civil life, but because her deceased husband was. It is a far, and, we submit, an insurmountable step to argue that since the widow of a veteran who went to war gets a preference even when she herself did not do so, therefore respondents who stayed at home are also entitled to a preference; for if respondents are preferred, then *their* widows must likewise be. Such an attenuation of the required degree of service would pervert the purpose and policy of the statute. Moreover, as we have pointed out above (*supra*, pp. 27–28), the Act was intended to bring together in statutory form the previous statutes, Executive Orders, and regulations relating to federal employment preference for veterans. The provision for unmarried widows of veterans was merely a continuation and incorporation in the present Act of the provisions of previous statutes. Act of August 15, 1876, 19 Stat. 143, 169, 5 U. S. C. 37; Act of July 11, 1919,

41 Stat. 35, 37, 5 U. S. C. 35; Act of June 18, 1929, 46 Stat. 21, 5 U. S. C. 35.

b. The majority of the Court of Appeals also passed lightly over respondents' part-time duties, their freedom from transfer away from home, and their continuing to remain part of the civilian community, with a reference to army personnel who performed "paper work" in offices in this country and lived with their families (R.66), and to the various kinds of limited service in the armed forces (R. 66). But all full-time military and naval personnel, whatever their duties, differed radically from respondents in being subject to military law at all times, and liable at all times to transfer elsewhere within the country, beyond the seas, or even into actual combat. This was true of those stationed in The Pentagon, as well as of limited service inductees with physical defects, and many were actually transferred and their duties sharply altered in accordance with changes in the course of the war and of manpower needs.[21] This crucial difference has been

[21] Many members of the Army Specialized Training Program, engaged in a long-term program of studying scientific, engineering, medical, and linguistic specialties, were suddenly transferred early in 1944 into infantry divisions and became, almost overnight, infantry privates, because of the pressing needs of the Army Ground Forces for replacements. Palmer, *Manpower for the Army (Part Three: The ASTP and its Effect on AGF)*, 61 Infantry Journal (No. 3, Sept. 1947), pp. 39, 43.

Waves and Spars were not subject to overseas service without their consent (Act of July 30, 1942, 56 Stat. 730, as

put, perhaps somewhat strongly, by Judge William Clark, then a member of the New Jersey Court of Errors and Appeals, in holding an army field clerk not to be a "soldier" entitled to civil service preference under the New Jersey statute (*Stephens* v. *Civil Service Comm.*, 101 N. J. L. 192, 202):

> Of course, the complexities of modern warfare have broadened that definition [i. e. of a "soldier"] considerably beyond the foot soldier who engaged in physical combat with a similar one of the enemy. Nevertheless, it seems reasonable to believe that the legislature, which was conferring a great privilege upon soldiers (at the expense of the other citizens of the state), intended to require that such privilege be enjoyed only by those whose corresponding obligations might involve them in such combat. In time of war, the President, commander-in-chief of the army, has undoubtedly the power to transfer the enlisted and commissioned personnel of the army at will, and an individual's subjection to such power would, without question, bring him within this ancient conception, because he might be transferred into the fighting forces of the army. The army field clerk, in so far as he is neither an enlisted man nor an officer, could not be

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amended, 58 Stat. 754, 34 U. S. C., Supp. V, 857c; Act of November 23, 1942, 56 Stat. 1020, as amended, 58 Stat. 754, 14 U. S. C., Supp. V, 384), but they could be stationed anywhere within the continental United States.

> so transferred or ordered to perform any duties except those of an army field clerk, which, concededly, do not involve personal contact with the enemy.

In like fashion, members of the Volunteer Port Security Force performed useful and necessary work in the furtherance of national defense, but much more than army field clerks they were removed from military control and from the possibility of sudden catapulting into new zones and kinds of life. Their contracts of enrollment specifically exempted them from transfer without consent (R. 6, 15, 51); and, both at the time of enrollment and throughout their connection with the Coast Guard, it was almost certain that their periods of duty would be intermittent, relatively short, and interfering little with their regular civilian employment, unless they themselves agreed to more extensive service (R. 6, 14–15, 51). Nor were respondents subject to military law, military orders, or military discipline during the great bulk of their time (R. 6–7, 51–52).[22]

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[22] Many civilians serving with the armed forces in theatres of operation are, of course, subject to military or naval court-martial jurisdiction at all times. Article of War 2 (d), 10 U. S. C. 1473 (d); Articles for the Government of the Navy, 34 U. S. C., Supp. V, 1201; *Perlstein* v. *United States*, 151 F. 2d 167 (C. C. A. 3), certiorari granted, 327 U. S. 777, dismissed as moot, 328 U. S. 822; *In re Di Bartolo*, 50 F. Supp. 929 (S. D. N. Y.); *In re Berue*, 54 F. Supp. 252 (S. D. Ohio). Likewise, many civilians, particularly in the Office of Strategic Services and the Civil Air Patrol, performed combat duties with great heroism and at great risk.

By the specific terms of the enrollment contracts, their military status as coastguardsmen attached only during their duty periods (R. 6, 51).

c. Rejecting all argument from the purpose or background of the Preference Act, the Court of Appeals thought the matter finally determined by the "plain" consideration "that one who has taken the military oath of service, who is a member of a component of the armed forces, who is subject to and actually engaged in military duty, and who is governed by the rules of military discipline is a 'serviceman'" (R. 64). To the contrary, with the addition of the essential facts—omitted by the court below—that respondents' military duty was performed only for a short period each week, that their military status as members of the Coast Guard Reserve attached only during their duty periods (R. 6, 51), that they were governed by military discipline only during that short period, that their civilian employment was not interrupted in any way, that they were not subject to transfer away from their homes without their consent, and that they could in all probability be disenrolled upon representation that their Coast Guard duty assignments conflicted with their civilian jobs, we think, as we have said (*supra*, pp. 31–32), that common speech would not classify respondents as "veterans" or "ex-servicemen." And when account is taken of the Preference Act's purpose, its place in the general system of veteran's benefit legislation, its close connection in

genesis and purpose with the Servicemen's Readjustment Act of 1944, and of the uniform administrative construction of related veterans' statutes, the only proper reading of Section 2 of the Act excludes temporary reservists such as respondents.

5. *Conclusion.*—That temporary reservists took a military oath, intermittently wore the Coast Guard uniform, performed part-time military duty and were intermittently subject to military law, does not automatically stamp them as "servicemen" or "veterans" for all purposes and at all times, or entitle them to all the benefits which Congress bestows upon veterans. The initial part of our argument urges that the meaning of "ex-servicemen," of "veteran," of "active duty," as of most similar terms in the field of veterans' and military legislation, must flow from the specific context and the particular purpose. *Supra,* pp. 17–23. Cf. *United States* v. *Mouat,* 124 U. S. 303, decided January 23, 1888 (Navy paymaster's clerk not an "officer" for purposes of traveling expense statute) with *United States* v. *Hendee,* 124 U. S. 309, also decided January 23, 1888 (Navy paymaster's clerk held an "officer" for purposes of salary increase act). The character, context and purpose of the Preference Act prove that in this instance temporary reservists are not "ex-servicemen * * * who have served on active duty" in the Coast Guard. To disregard this statutory context, purpose, and character, in favor

of a Procrustean definition, constructed out of formal indicia such as the military oath and the military uniform, is first to endow non-technical words with an absoluteness they do not possess, and then "to make a fortress out of the dictionary" (*Cabell* v. *Markham*, 148 F. 2d 737, 739 (C. C. A. 2)), at the expense of reason and the policy of the legislation as a whole. Cf. *Holy Trinity Church* v. *United States*, 143 U. S. 457; *United States* v. *American Trucking Ass'ns.*, 310 U. S. 534, 543; *Markham* v. *Cabell*, 326 U. S. 404, 409.

II

RESPONDENTS DID NOT ACQUIRE PREFERENCE UNDER SECTION 18 OF THE VETERANS' PREFERENCE ACT BY VIRTUE OF THE CIVIL SERVICE COMMISSION'S RULING OF APRIL 4, 1944

Respondents contend, and the court below held (R. 68), that they acquired vested preference under Section 18 of the Act,[23] by virtue of the Civil Service Commission's ruling, on April 4, 1944, that all temporary Coast Guard Reservists were entitled to veterans' preference (*supra*, p. 8), which was subsequently overruled by the Commission on November 4, 1944. The argument is disproved by the terms of Section 18, its

[23] Section 18 (*infra*, pp. 66–67) provides in pertinent part: "* * * this Act shall not be construed to take away from any preference eligible any rights heretofore granted to, or possessed by, him under any existing law, Executive order, civil-service rule or regulation, of any department of the Government or officer thereof."

purpose, and the character of the April 4th ruling.

A. Section 18 was mainly inserted to preserve preferences granted under earlier statutes (*supra*, pp. 27–28), and executive orders, to so-called "peacetime veterans"—those who had served in the armed forces in peacetime. The new Preference Act did not grant preference to future peacetime veterans, and Section 18 was intended as a "saving clause" to preserve the rights of such veterans then in government employment or on civil service registers. H. Rep. 1289 (dated March 27, 1944) states (p. 3) that the new Act "* * * eliminates from future preference so-called peacetime veterans, but in section 18 there is specific provision that the act is not to be construed as taking away from any preference eligible any rights heretofore granted to, or possessed by, him under any existing law, Executive order, civil-service rule or regulation, of any department of the Government or officer thereof." The Senate Report (S. Rep. 907, May 25, 1944) states (p. 2): "Ex-servicemen whose only service was performed during peacetime would not in the future be entitled to preference. By virtue of the provisions of section 18, however, peacetime veterans who are already in Government employment, or whose names are carried on civil-service registers on the date of enactment of this bill will not lose the

preference accorded them under existing laws and regulations." [24]

The "saving clause," then, was designed to protect the preference rights of those who were preference-entitled *veterans* on June 27, 1944, the date the new Preference Act became law, regardless of whether the new Act would itself confer such preferred status. But Section 18 was not intended to grant preference to anyone who was not a veteran on June 27, 1944, even though a then existing statute or regulation told him that if he thereafter served in the armed forces, and was honorably separated, he would become entitled to preference. Rulings and orders were not to be preserved *in toto*, but only to the extent that rights under them had already been earned. In short, Section 18 was meant to protect veterans with "vested" preference rights, and not non-veterans with no more than an opportunity to become preference-entitled veterans in the future.

But that is exactly respondents' case. On June 27, 1944, the Civil Service Commission's ruling of April 4, 1944, was outstanding, but neither respondent had any rights thereunder, because neither was a "veteran" or "ex-serviceman," in

[24] The Attorney General has ruled that a peacetime veteran is not entitled to rights under Section 14 of the Preference Act (*infra*, pp. 64–65), since that section adds rights not available under the preexisting law. 40 Op. Atty. Gen. No. 103, October 16, 1945.

any sense of those terms. Cohen had enrolled in the Coast Guard Reserve (Temporary) on April 13, 1944; he was still a member on June 27, 1944; and he was not disenrolled until September 5, 1945. *Supra,* p. 3. Hubickey did not enroll until October 18, 1944, and was not disenrolled until September 30, 1945. Even in their own eyes, neither was a "veteran," an "ex-serviceman," or "honorably discharged from the * * * naval service" on June 27, 1944, or on November 4, 1944, when the Commission recalled its earlier ruling; they could not have achieved that status, even in their own view, until September 5, 1945, and September 30, 1945, respectively. But they could not obtain preference rights until they achieved veteran's status, and on the dates in 1945 when they left the Coast Guard Section 2 of the Act was the sole provision granting rights of preference. Respondent's argument is tantamount to urging that future peacetime veterans must be accorded preference, in the teeth of Section 2 and the Congressional purpose, because the statutes and orders existing on June 27, 1944, gave preference to peacetime veterans.

B. The words of Section 18, as Mr. Justice Edgerton points out (R. 70–71), permit no other construction. The section speaks of "any preference eligible" who possessed preference rights, or to whom they were granted, before June 27, 1944.

Respondents were clearly not eligible for any kind of preference on that day, since they were not then veterans, ex-servicemen, or even former members of the armed forces; they possessed no preference, and no present rights were granted to *them* by the April 4th ruling. The most that can be said is that the ruling informed respondents that if they thereafter served in the temporary Reserve, and the ruling continued unrevoked by the Commission and unchanged by Congress, they would be granted preference rights upon their disenrollment.[25] But the passage of the Preference Act did intervene, and the Commission reviewed the prior ruling to determine whether it accorded with the new statute, as the Commission was certainly authorized to do by Sections 11 and 19 of the Act (*infra* pp. 63, 67), granting rule and regulation making power. On such review, the Commission decided that the earlier ruling did not comply with the Preference Act. (R. 16–18, 24–25.)

C. Moreover, there is considerable doubt whether the ruling of April 4th was warranted by

[25] While both respondents were enrolled subsequent to the ruling of April 4, 1944, and prior to its revocation on November 4, 1944, it cannot be urged that a subsequent right to preference was a part of their contract of enrollment. While it conceivably may have constituted a matter of inducement, it certainly was no part of the consideration for entering into the enrollment.

the then existing law, which granted preference only to "honorably discharged soldiers, sailors, and marines" and "those persons * * * who have been honorably discharged from the military or naval service of the United States." See *supra,* pp. 27–28, fn. 10. Temporary reservists were disenrolled rather than discharged (R. 9, 54), and there is good reason to believe that the Congresses which enacted the earlier preference legislation in 1876, 1919, and 1929 also intended the grant to apply only to veterans who had seen full-time service, and truly formed part of the military community. The issuance of an erroneous ruling, inconsistent with the governing statutes, could not directly confer rights upon any persons (*Manhattan General Equipment Co.* v. *Commissioner,* 297 U. S. 129, 135), nor is there any basis for asserting that an invalid ruling may confer rights upon respondents by way of estoppel. *Utah Power & Light Co.* v. *United States,* 243 U. S. 389, 409; *United States* v. *City and County of San Francisco,* 310 U. S. 16, 32; *Federal Crop Insurance Corp.* v. *Merrill,* No. 45, this Term, decided November 10, 1947. And Section 18 was clearly not intended to freeze an invalid or unauthorized ruling, made less than three months before the passage of the Preference Act, and while it was passing through Congress.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment below is incorrect and should be reversed, with directions to dismiss the complaints.

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DECEMBER 1947.

APPENDIX

1. The Veterans' Preference Act, Act of June 27, 1944, c. 287, 58 Stat. 387 (5 U. S. C., Supp. V, 851–869), provides as follows:

AN ACT

To give honorably discharged veterans, their widows, and the wives of disabled veterans, who themselves are not qualified, preference in employment where Federal funds are disbursed.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Veterans' Preference Act of 1944."

SEC. 2. In certification for appointment, in appointment, in reinstatement, in reemployment, and in retention in civilian positions in all establishments, agencies, bureaus, administrations, projects, and departments of the Government, permanent or temporary, and in either (a) the classified civil service; (b) the unclassified civil service; (c) any temporary or emergency establishment, agency, bureau, administration, project, and department created by Acts of Congress or Presidential Executive order; and (d) the civil service of the District of Columbia, preference shall be given to (1) those ex-service men and women who have served on active duty in any branch of the armed forces of the United States and have been separated therefrom under honorable conditions and who have established the pres-

ent existence of a service-connected disability or who are receiving compensation, disability retirement benefits, or pension by reason of public laws administered by the Veterans' Administration, the War Department or the Navy Department; (2) the wives of such service-connected disabled ex-servicemen as have themselves been unable to qualify for any civil-service appointment; (3) the unmarried widows of deceased ex-servicemen who served on active duty in any branch of the armed forces of the United States during any war, or in any campaign or expedition (for which a campaign badge has been authorized), and who were separated therefrom under honorable conditions; and (4) those ex-servicemen and women who have served on active duty in any branch of the armed forces of the United States, during any war, or in any campaign or expedition (for which a campaign badge has been authorized), and have been separated therefrom under honorable conditions.

SEC. 3. In all examinations to determine the qualifications of applicants for entrance into the service ten points shall be added to the earned ratings of those persons included under section 2 (1), (2), and (3), and five points shall be added to the earned ratings of those persons included under section 2 (4) of this Act: *Provided,* That in examinations for the positions of guards, elevator operators, messengers, and custodians competition shall be restricted to persons entitled to preference under this Act as long as persons entitled to preference are available and during the present war and for a period of five years following the termination of the present war as proclaimed by the President or by con-

current resolution of the Congress for such other positions as may from time to time be determined by the President.

SEC. 4. In examinations where experience is an element of qualification, time spent in the military or naval service of the United States shall be credited in a veteran's rating where his or her actual employment in a similar vocation to that for which he or she is examined was interrupted by such military or naval service. In all examinations to determine the qualifications of a veteran applicant, credit shall be given for all valuable experience, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether any compensation was received therefor.

SEC. 5. In determining qualifications for examination, appointment, promotion, retention, transfer, or reinstatement, with respect to preference eligibles, the Civil Service Commission or other examining agency shall waive requirements as to age, height, and weight, provided any such requirement is not essential to the performance of the duties of the position for which examination is given. The Civil Service Commission or other examining agency, after giving due consideration to the recommendation of any accredited physician, shall waive the physical requirements in the case of any veteran, provided such veteran is, in the opinion of the Civil Service Commission, or other examining agency physically able to discharge efficiently the duties of the position for which the examination is given. No minimum educational requirement will be prescribed in any civil-service examination except for such scien-

tific, technical, or professional positions the duties of which the Civil Service Commission decides cannot be performed by a person who does not have such education. The Commission shall make a part of its public records its reasons for such decision.

SEC. 6. Preference eligibles shall not be subject to the provisions of section 9 of the Civil Service Act, concerning two or more members of a family in the service, or to the provisions of section 2 of that Act concerning apportionment of appointments in the Government departments in the District of Columbia among the several States and Territories according to population, but may be required to furnish evidence of residence and domicile.

SEC. 7. The names of preference eligibles shall be entered on the appropriate registers or lists of eligibles in accordance with their respective augmented ratings, and the name of a preference eligible shall be entered ahead of all others having the same rating: *Provided*, That, except for positions in the professional and scientific services for which the entrance salary is over $3,000 per annum, the names of all qualified preference eligibles, entitled to ten points in addition to their earned ratings shall be placed at the top of the appropriate civil-service register or employment list, in accordance with their respective augmented ratings.

SEC. 8. When, in accordance with civil-service laws and rules, a nominating or appointing officer shall request certification of eligibles for appointment purposes, the Civil Service Commission shall certify, from the top of the appropriate register of eligibles, a number of names sufficient to permit the nominating or appointing officer to consider at least three names in connec-

tion with each vacancy. The nominating or appointing officer shall make selection for each vacancy from not more than the highest three names available for appointment on such certification, unless objection shall be made, and sustained by the Commission, to one or more of the persons certified, for any proper and adequate reason, as may be prescribed in the rules promulgated by the Civil Service Commission: *Provided,* That an appointing officer who passes over a veteran eligible and selects a nonveteran shall file with the Civil Service Commission his reasons in writing for so doing, which shall become a part of the record of such veteran eligible, and shall be made available upon request to the veteran or his designated representative; the Civil Service Commission is directed to determine the sufficiency of such submitted reasons and, if found insufficient, shall require such appointing officer to submit more detailed information in support thereof; the findings of the Civil Service Commission as to the sufficiency or insufficiency of such reasons shall be transmitted to and considered by such appointing officer, and a copy thereof shall be sent to the veteran eligible or to his designated representative upon request therefor: *Provided, further,* That if, upon certification, reasons deemed sufficient by the Civil Service Commission for passing over his name shall three times have been given by an appointing officer, certification of his name for appointment may thereafter be discontinued, prior notice of which shall be sent to the veteran eligible. Whenever in the Postal Service two or more substitutes are appointed on the same day, they shall be promoted to the regular force in the order in which their names appeared on the civil-

service register from which they were originally appointed, whenever there are substitutes of the required sex who are eligible and will accept, unless such vacancies are filled by transfer or reinstatement.

SEC. 9. In the unclassified Federal, and District of Columbia, civil service, and in all other positions and employment hereinbefore referred to in (c) of section 2 hereof, the nominating or appointing officer or employing official shall make selection from the qualified applicants in accordance with the provisions of this Act.

SEC. 10. The Civil Service Commission is authorized and directed to hold an examination, during the next succeeding quarterly period, for any position to which any appointment has been made within the preceding three years, for any person included under section 2 (1), (2), and (3) of this Act upon application for examination for any such position.

SEC. 11. The Civil Service Commission is hereby authorized to promulgate appropriate rules and regulations for the administration and enforcement of the provisions of this Act.

SEC. 12. In any reduction in personnel in any civilian service of any Federal agency, competing employees shall be released in accordance with Civil Service Commission regulations which shall give due effect to tenure of employment, military preference, length of service, and efficiency ratings: *Provided,* That the length of time spent in active service in the armed forces of the United States of each such employee shall be credited in computing length of total service: *Provided further,* That preference employees whose efficiency ratings are "good" or better shall be retained in pref-

erence to all other competing employees and that preference employees whose efficiency ratings are below "good" shall be retained in preference to competing nonpreference employees who have equal or lower efficiency ratings: *And provided further,* That when any or all of the functions of any agency are transferred to, or when any agency is replaced by, some other agency, or agencies, all preference employees in the function or functions transferred or in the agency which is replaced by some other agency shall first be transferred to the replacing agency, or agencies, for employment in positions for which they are qualified, before such agency, or agencies, shall appoint additional employees from any other source for such positions.

SEC. 13. Any preference eligible who has resigned or who has been dismissed or furloughed may, at the request of any appointing officer, be certified for, and appointed to, any position for which he may be eligible in the civil service, Federal, or District of Columbia, or in any establishment, agency, bureau, administration, project, or department, temporary or permanent.

SEC. 14. No permanent or indefinite preference eligible, who has completed a probationary or trial period employed in the civil service, or in any establishment, agency, bureau, administration, project, or department, hereinbefore referred to shall be discharged, suspended for more than thirty days, furloughed without pay, reduced in rank or compensation, or debarred for future appointment except for such cause as will promote the efficiency of the service and for reasons given in writing, and the person whose discharge, suspension

for more than thirty days, furlough without pay, or reduction in rank or compensation is sought shall have at least thirty days' advance written notice (except where there is reasonable cause to believe the employee to be guilty of a crime for which a sentence of imprisonment can be imposed), stating any and all reasons, specifically and in detail, for any such proposed action; such preference eligible shall be allowed a reasonable time for answering the same personally and in writing, and for furnishing affidavits in support of such answer, and shall have the right to appeal to the Civil Service Commission from an adverse decision of the administrative officer so acting, such appeal to be made in writing within a reasonable length of time after the date of receipt of notice of such adverse decision: *Provided,* That such preference eligible shall have the right to make a personal appearance, or an appearance through a designated representative, in accordance with such reasonable rules and regulations as may be issued by the Civil Service Commission; after investigation and consideration of the evidence submitted, the Civil Service Commission shall submit its findings and recommendations to the proper administrative officer and shall send copies of same to the appellant or to his designated representative: *Provided further,* That the Civil Service Commission may declare any such preference eligible who may have been dismissed or furloughed without pay to be eligible for the provisions of section 15 hereof.

SEC. 15. Any preference eligible, who has been furloughed, or separated without delinquency or misconduct, upon request, shall have his name placed on all appro-

priate civil-service registers and/or on all employment lists, for every position for which his qualifications have been established, as maintained by the Civil Service Commission, or as shall be maintained by any agency or project of the Federal Government, or of the District of Columbia, in the order as provided in section 7 hereof, and shall then be eligible for recertification and reappointment in the order and according to the procedure as provided for in sections 7 and 8 hereof. No appointment shall be made from an examination register of eligibles, except of ten-point preference eligibles, when there are three or more names of preference eligibles on any appropriate reemployment list for the position to be filled.

SEC. 16. Any preference eligible who has resigned shall, upon request to the Civil Service Commission, have his name again placed on all proper civil-service registers for which he may have been qualified, in the order as provided for in section 7 hereof, and shall then be eligible for recertification and reappointment in the order, and according to the procedure, as provided for in sections 7 and 8 hereof.

SEC. 17. The term "Civil Service Commission" or "Commission" as used in this Act shall mean the present United States Civil Service Commission or any body or person who may by law succeed to its powers and duties, or any of them, or which or who may be designated by law to perform any specific duty and possess any specific power concerning matters covered by this Act.

SEC. 18. All Acts and parts of Acts inconsistent with the provisions hereof are

hereby modified to conform herewith, and this Act shall not be construed to take away from any preference eligible any rights heretofore granted to, or possessed by, him under any existing law, Executive order, civil-service rule or regulation, or of any department of the Government or officer thereof.

SEC. 19. It shall be the authority and duty of the Civil Service Commission in all cases under the classified civil service to make and enforce appropriate rules and regulations to carry into full effect the provisions, intent, and purpose of this Act and such Executive orders as may be issued pursuant thereto and in furtherance thereof.

SEC. 20. Nothing contained in this Act is intended to apply to any position in or under the legislative or judicial branch of the Government or to any position or appointment which by the Congress is required to be confirmed by, or made with, the advice and consent of the United States Senate: *Provided, however,* That the provisions of this Act shall apply to appointments under Public Law Numbered 720, Seventy-fifth Congress, third session, approved June 25, 1938.

SEC. 21. If any part of this Act shall be found to be unconstitutional, the rest of it shall be considered as in full force and effect.

2. The pertinent portions of the Coast Guard Auxiliary and Reserve Act, Act of February 19, 1941, c. 8, Title II, §§ 207, 208, 209, 211, 212, 55 Stat. 12, as amended (14 U. S. C., Supp. V, 307, 308, 309, 311, 312), provide:

SEC. 207. The Commandant, with the approval of the Secretary of the Treasury or of the Secretary of the Navy, while the Coast Guard is operating as a part of the Navy, is hereby authorized to enroll as temporary members of the Reserve, for duty under such conditions as he may prescribe, including but not limited to part-time and intermittent active duty with or without pay, and without regard to age, members of the Auxiliary, such officers and members of the crew of any motorboat or yacht placed at the disposal of the Coast Guard, and such persons (including Government employees without pay other than compensation of their civilian positions) who by reason of their special training and experience are deemed by the Commandant to be qualified for such duty, as are citizens of the United States or of its Territories or possessions, including the Philippine Islands, to define their powers and duties, and to confer upon them, appropriate to their qualifications and experience, the same ranks, grades, and ratings as are provided for the personnel of the regular Coast Guard Reserve. When performing active duty with pay, as herein authorized, temporary members of the Reserve shall be entitled to receive the pay and allowances of their respective ranks, grades, or ratings, as may be authorized for members of the regular Coast Guard Reserve.

SEC. 208. Members of the Reserve, other than temporary members as provided for in section 207 hereof, shall receive the same exemption from registration and liability for training and service as members of the Naval Reserve, and no member of the Reserve, other than temporary members thereof, shall be a member of any other

naval or military organization except the Auxiliary or the Coast Guard as provided for in sections 214 and 215 of this title: *Provided,* That temporary members of the Reserve who may be members of any other military reserve, if ordered to active duty therein, shall be forthwith released from all active duty with the Coast Guard, and their status as temporary members of the Reserve terminated.

SEC. 209. All members of the Reserve when employed on active duty, or when employed in authorized travel to or from such duty, or while wearing a uniform prescribed for the Reserve, shall be subject to the laws, regulations, and orders for the government of the Coast Guard: *Provided,* That disciplinary action for an offense committed while subject to the laws, regulations, and orders for the government of the Coast Guard shall not be barred by reason of release from duty status of any person charged with the commission thereof: *Provided further,* That for the purpose of carrying the provisions of this section into effect, members of the Reserve may be retained on or returned to a duty status without their consent, but not for a longer period of time than may be required for disciplinary action.

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SEC. 211. Members of the Reserve, other than temporary members thereof, who suffer sickness, disease, disability, or death in line of duty shall be entitled to the same benefits as are or may hereafter be prescribed by law for members of the Naval Reserve who suffer sickness, disease, disability, or death under similar conditions.

SEC. 212. (a) In case of physical injury or death resulting from physical injury—

(1) to any temporary member of the Reserve when incurred after February 19, 1941, in line of duty as a member of the Reserve, while on active duty or engaged in authorized travel to or from such duty; or

(2) to any member of the Auxiliary not on active duty as a member of the military or naval forces, when incurred after February 19, 1941, while on Coast Guard patrol pursuant to the request of competent Coast Guard authority, and which would have been incurred in line of duty in the active service had he been a member of the Reserve acting under competent orders;

the provisions of the Act entitled "An Act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes", approved September 7, 1916 (5 U. S. C., ch. 15), as amended, subject to the other subsections of this section, shall apply, and such Act shall be administered by the United States Employees' Compensation Commission (hereinafter called the Commission) in the same manner and to the same extent as if such person were a civil employee of the United States and were injured while in the performance of his duty: *Provided*, That for benefit computation, regardless of pay or pay status, such person shall be deemed to have had monthly pay of $150.

(b) This section shall not apply in any case coming within the purview of the workmen's compensation law of any State, Territory, or other jurisdiction because of a concurrent employment status of such member; and where such member or dependent should be entitled to a benefit under this section and also to any concur-

rent benefit from the United States on account of the same disability or death, such member or dependent shall elect which benefit he shall receive.

(c) Whenever a claim is filed with the Commission for benefits because of an alleged injury or death within the purview of this section, the Commission shall notify the Commandant and he or his designee shall investigate the facts surrounding such alleged injury and make certification with respect thereto, including certification as to such injured or deceased person's membership in the Reserve or Auxiliary and his military status, and whether the injury or death occurred in line of duty or while on Coast Guard patrol pursuant to request of competent Coast Guard authority. Such certifications shall not excuse the making of such reports as are required by such Act of September 7, 1916.

(d) Notice of injury and any claim for benefits on account of disability or death within the purview of this section which occurred prior to the enactment of this amendment, may be received as timely filed, if filed within one year from the date of the approval of this amendatory Act.

(e) In case of physical injury incurred, or sickness or disease contracted (1) by any temporary member of the Reserve while performing active Coast Guard service or (2) by any member of the Auxiliary not a regular or temporary member of the Reserve, while performing active Coast Guard patrol service pursuant to request of competent Coast Guard authority, such person shall be entitled to receive the same hospital treatment as is afforded members of the Regular Coast Guard.

U. S. GOVERNMENT PRINTING OFFICE: 1947